ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

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CCB Act 96 Telk PV Reed

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Docket 96-152

CCB Pol 96-17

5066

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

As you know, the Federal Communications Commission is currently conducting a rulemaking (CC Docket No. 96-152) that encompasses implementation of the alarm monitoring provisions of the Telecommunications Act of 1996 (47 U.S.C. § 275 passed as part of § 151 of the Telecommunications Act of 1996). *See* 61 Fed. Reg. 39385 (July 29, 1996). I understand that the Commission is also considering a Motion for Orders to Show Cause and to Cease and Desist (CCB Pol 96-17) that involves similar questions of law and congressional intent. In particular, both of these proceedings include an inquiry into the proper interpretation of 47 U.S.C. § 275(a)(2). I further understand, based upon inquiries made by my Judiciary Committee staff to the Commission's General Counsel's office, that both of these proceedings permit public comment with public disclosure.

Because the Modified Final Judgment ("MFJ") treated alarm monitoring as an information service, the subject matter of alarm monitoring under the 1996 Telecommunications Act was dealt with as part of the termination of the MFJ. Because the MFJ is an antitrust consent decree, under the House rules, those provisions in the telecommunications legislation were viewed as falling primarily within the jurisdiction of the Committee on the Judiciary. Consequently, as Chairman of the House Judiciary Committee, I was heavily involved in the alarm monitoring provisions during House consideration of the Telecommunications Act and, as a member of the House-Senate Conference Committee, participated extensively in the negotiations leading to the statutory language that was finally adopted.

Section 275 allows the regional Bell operating companies ("RBOCs") to enter the alarm monitoring business in a measured way, while at the same time providing certain protections to existing alarm dealers. In particular, the first paragraph of 47 U.S.C. § 275(a) prohibits any of the RBOCs from entering the alarm monitoring business for five years from the date of enactment. The second paragraph of 47 U.S.C. § 275(a) grandfathered the one RBOC, Ameritech, that had entered the business before November 30, 1995.

The second paragraph further prohibited Ameritech from "acquir[ing] any equity interest in, or obtain[ing] financial control of, any unaffiliated alarm monitoring service entity" for the five-year period after the date of the enactment. 47 U.S.C. § 275(a)(2). This language plainly focuses on the acquisition of an alarm monitoring *entity* -- not the *assets* of such an entity. Thus, the language prohibits acquiring an equity interest in, or obtaining financial control of, another alarm monitoring company. It does not prohibit, nor was it ever intended to prohibit, the acquisition of assets owned by another alarm monitoring company. Equity, control, and assets are different concepts, and Congress clearly chose which of those concepts to include and exclude from this provision. As I put it in my floor statement, "'grandfathered' BOC's may grow their alarm monitoring business through customer *or asset acquisitions*; however for 5 years from the date of enactment, such a company may 'not acquire any equity interest in or obtain financial control' of an unaffiliated alarm monitoring company." 142 Cong. Rec. H 1157, H 1158 (daily ed. February 1, 1996) (statement of Judiciary Committee Chairman, Representative Henry J. Hyde).

That clear choice represents a congressional judgment balancing the interests of the various affected parties. The members of the Conference Committee spent a considerable amount of time and effort reaching this balance. Part of the balance was fairness for Ameritech. Ameritech entered this business when it was perfectly legal to do so. It relied on the law as it was at that time, and Congress felt that it was not fair to change the rules in midstream when that company relied on the law in good faith. Thus, the protections included in the statute for existing alarm dealers were prospective only.

Ameritech is merely one competitor in a highly diverse market consisting of many alarm monitoring companies, some of which are large and some of which are small. Of all of these companies, only Ameritech is subject to a prohibition on the acquisition of other alarm monitoring entities. Given all of these considerations, I am hopeful that in promulgating regulations relating to this section and in resolving the motion, the Commission will respect this carefully drawn statutory language and not read a meaning into this provision that the plain language will not support.

I appreciate your careful consideration of this important issue and request that you place copies of this letter in the appropriate public files.

Sincerely,

HENRY J. HYDE
Chairman

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